

The 25th October, 1994

No. 14/13/87-6 Lab./769.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad, in respect of the dispute between the workman and the management of M/s Aman Scales Pvt. Ltd, Faridabad *versus* Kapil Dev.

IN THE COURT OF SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Ref. No. 38 of 90

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI KAPIL DEV S/O SHRI HANS NATH SINGH, C/O HARYANA MAZDOOR FEDERATION,
PRAVESH MARG, RLY. ROAD, FARIDABAD .. Claimant

and

M/S AMAN SCALES PVT. LTD., 14-A, NEHRU GROUND, NIT, FARIDABAD

.. Management

Present :--

Mrs. Savita Bhandari, Authorised Representative for the workman.

Shri K. P. Aggarwal, Authorised Representative for the management.

AWARD

Under the provisions of Section 10 (1)(d) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endowment OVFD/10-89/43495—500, dated 16th October, 1989, referred the following dispute between the parties above mentioned for adjudication :—

“Whether Shri Kapil Dev had resigned and collected his full and final dues or his services were terminated and if so, to what relief he is entitled ?

2. The case of the workman is that he had been working as Shaper Operator since 1st May, 1984 and was in receipt of Rs. 885 as his monthly wages. On 17th September, 1988, the Management had displayed it on the notice board that the factory was being closed. The workman contends to have prepared a demand notice on 17th September, 1988 itself and had sent the same to the Management through Regd. post and five copies thereof were sent to the Labour and Conciliation Officer, Faridabad. According to the workman, the Management had neither replied to the demand notice nor had appeared in person although they used to send their legal adviser. The matter pending before the Labour and Conciliation Officer was, however, postponed to 6th February, 1989.

3. Further case of the workman is that the management had arranged a meeting at the residence of their Legal Adviser K. P. Aggarwal which was attended to by him (workman) also. The allegation of the workman is that 5-7 more persons were also present there and they had asked him to take his full and final dues. And when he had refused to do so, he was given threats. On this, the workman wanted to leave that place but instead, his signatures were forcibly obtained on so many papers and vouchers and not only this they had got it written from the workman that he had received an amount of Rs. 14000. Where as only a Bank Draft for an amount of Rs. 6000 was given to him. The workman alleges to have made a complaint, in writing, in respect thereof to the Deputy Commissioner and Superintendent of Police. It has also been alleged by the workman that the Management had restarted its factory w.e.f. 25th March, 1989 and,—*vide* publicity thereof given in the news papers. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

4. The case of the management is that it was carrying on manufacturing job of weighing Scales and weigh Bridges at its factory at 14-A, Nehru Ground, Faridabad in the name and style of Aman Scales Pvt. Ltd., and it was manufacturing and repairing unit in the records of the Govt. Faridabad Complex Administration raised objections for keeping goods outside factory premises and for that reason the Management had shifted its foods lying outside in the open ground to their plot No. 55, Sector 27A, Faridabad. This Plot No. 55 was never used as a Factory or even as a trading unit. No employee of M/s Aman Scale was ever engaged for production at Plot No. 55 aforesaid. On the date of closure of the factory on 17th September, 1988, there were 18 persons in employment and the services of all the employees were terminated. On date,

fifteen (15) of them including Kapil Dev had collected their full and final account. Therefore, after closure, there did not exist any Industrial Dispute. Those of the employees who had received full and final dues have waived their right of raising any dispute of any kind what-so-ever in respect of their employment in the factory. The facts relating to collection of dues by Kapil Dev is that on seeing that one after the other different employees were taking their full & final account, Kapil Dev approached K. P. Aggarwal on 28th February, 1989 and told him to get prepared total dues chart of Mukh Ram and his other co-workers. On 1st March, 1989, K. P. Aggarwal had shown him the chart. Kapil Dev told K. P. Aggarwal to call Vijay Kapoor Managing Director from home. After the arrival of Vijay Kapoor at the residence of K. P. Aggarwal, Kapil Dev got Mukh Ram's amount increased to Rs. 8000 that of Hira Lal to Rs. 4000 Ram Kumar to Rs. 4000 Chandrika Yadav to Rs. 6500, Ram Chander Grish to Rs. 5500 and his personal amount to Rs. 14000 stating that Rs. 6000 be paid to him by Bank Draft and balance amount of Rs. 8000 in cash because he had to pay Rs. 3000 to his union and Rs. 3000 to some other workers. He had also said that he had spent four to five thousand rupees on miscellaneous matters since closure. Drafts in respect of the above said amount were got prepared but none had turned up for payment. However, on 6th March, 1989, Mukh Ram received the Draft of Rs. 8000 after signing stamped receipts in the presence of Kapil Dev who, too, signed, the same as witness. There after, Kapil Dev also expressed desire to receive his own payment of Rs. 14000. Accepting the same both Vijay Kapoor Director of the Company and the claimant Kapil Dev had signed Memorandum of settlement, joint letter to the Government and a stamped receipt for 14000. Kapil Dev is stated to have kept these documents with him which he had returned after taking Rs. 8000 in cash and a Draft of Rs. 6000. Kapil Dev is also shown to have singed a cash voucher of Rs. 8000 and had also written a receipt in Hindi in his own handwriting with regards to cash amount of Rs. 8000 and Bank Draft of Rs. 6000. Besides signatures, Kapil Dev is also stated to have thumb marked settlement, joint letter addressed to State Government, typed receipt (both sides) and Hindi receipt written by him. So, according to Management, the allegation of the workman that a Draft of Rs. 6000 alone was given to him is false and mala fide and has been levelled to extract more money from Management. Not only this, Kapil Dev is also stated to have brought PF. form from Provident Fund Office and signed the same at five different places in the presence of K. P. Aggarwal. He had also supplied his saving bank account number which was to be written on the P. F. form. The Management have denied that the signatures and thumb impressions of Kapil Dev were obtained forcibly on blank papers on 6th March, 1989 in collusion with K.P. Aggarwal and along with 5-7 musclemen engaged by the Management.

5. The Management have stated that it had bonafidely and physically closed the factory from 17th September, 1988 and had re-opened the same w.e.f. 27th March, 1989 for Trading purposes only. According to it, the services of Kapil Dev and others were terminated because all of them were engaged in manufacturing activity only and that the Management had full right to close its manufacturing business and start trading and no permission for the same was required from any authority.

6. Preliminary objections, taken by the Management are firstly that since Kapil Dev has taken his full and final dues he is now stopped from raising for this claim and reference is bad in law because the demand notice dated 28th March, 1989 was first rejected by the State Govt.—vide letter dated 12th June, 1989 and then again referred for adjudication without hearing the Management.

7. In rejoinder, pleas taken in the claim petition have been reiterated while those in the written statement controverted. It has also been stated that the Respondent had terminated the services of its employees by declaring pseudo closure and, in fact, is even now carrying on manufacturing and repairing activities not only at Plot No 14A Nehru Ground, Faridabad but also in premises of M/s H. P. Wire in the village Lakkarpur at Delhi-Faridabad border. On point of payment as having been made, the plea raised by the workman in the rejoinder is that the workman was offered an amount of Rs. 14000 as his full and final dues on the pre-condition that he would secure withdrawal all the 12 reference cases of other co-employees. The claimant was given an amount of Rs. 6000,—vide Draft and the balance amount was kept back. The claimant was given an authority letter in hand writing of K. P. Aggarwal which the claimant was asked to get signed from 12 employees. The authority letter duly signed by other employees was snatched by K. P. Aggarwal and one Ramesh Son-in-law of K. P. Aggarwal in the premises of the Industrial Tribunal and there was lot of noise and din and the authority letter was placed on the record of the court in a torn condition. The then Presiding Officer wanted to refer the matter to the Police but a compromise was arrived at. The claimant was refusing to hand over authority letter and had also refused to make a statement of withdrawal of the case on the basis of the authority letter without prior payment of Rs. 8000. K. P. Aggarwal and his son-in-law insisted upon filing authority letter and making statement before Tribunal first and then take the money. So, it was in these circumstance that the amount of Rs. 8000 was never paid to the claimant. It has also been pleaded that the claimant is a semi literate person and accounts and vouchers were got signed from him by some mis-representation coercion and undue influence :—

8. On the pleadings of the parties, following issues were framed :—

(1) As per reference.

(2) Whether the reference is bad in law.

- (3) Whether the workman had not received full and final payment despite having executed receipt dated 6th March, 1989. If so, its effect?
- (4) Whether the settlement dated 6th March, 1989 was executed by the workman under any threat, pressure, coercion or misrepresentation. If so, its effect?

9. I have perused written notes filed by the parties as also oral and documentary evidence on record. My findings on each of the issues with reasons therefore are as under :

Issue No. 1 :

10. It is not the case of either of the parties to the dispute that the workman had tendered resignation. Both the parties, on the other hand, contend that the factory at 14-A, Nehru Ground, Faridabad was closed on 17th September, 1988 and inevitably the services the workmen were terminated. According to the Management, factory was running in losses for the last one year as is evident from the notice of closure Ex. MW-2/i and the same had to be closed. As against this, the contention of the workman is that the closure is in the nature of pseudo closure resorted to with the sole object of dispensing with the services of the workman because of his trade union activities and his fact that the closure was not a real one is evident from this that the Management had restarted its business from 11th March, 1989 for which advertisement was given in the newspapers Ex. W-16 to Ex. W-22. The reply to this of the Management is that it had restarted its business not of manufacturing but of trading only.

11. The workman had let lot of evidence on the closure aspect of the matter. He had examined seven witnesses namely S. S. Sharma weights & Measures Inspector (WW-2), P. C. Sharma Inspector Central Excise (WW-3), T. C. Sharma Provident Fund Inspector (WW-4), Din Dyal LDC ESI (WW-5), Om Parkash of Bhatia Sales Corporation (WW-6) and K. R. Sharma of SBI (WW-7). All these witnesses have proved various documents i.e. Ex. W-27, Ex. W-29 to W-32, Ex. W-33 to W-37, Ex. W-38 and Ex. W-39. The statements of these witnesses read as a whole do not help one to draw a definite conclusion that the Management had been carrying on manufacturing as well. But I do not, propose to discuss the value attached to statements of these witnesses and the documents placed on record by them because the right of the Management to close the factory is undisputed and to adjudicate on the point as to whether the closure was justified or not would be travelling beyond the scope of reference. It is law well settled that the jurisdiction of an Industrial Tribunal in a reference for adjudication is limited to the points specifically referred to it and to matters incidental thereto and it cannot widen its scope of enquiry beyond the terms of reference. It was held in *Pottery Mazdoor Panchayat versus Perfect Pottery Co. Ltd.* and another 1979 FJR (55) 511, Rajasthan State Road Transport Corporation and another versus The Judge Industrial Tribunal Rajasthan Jaipur & another 1988 LIC 480 and *Delhi Cloth and General Mills Co. Ltd.*, and their workman & other 1969 (1) LL (SC) 423. These rulings are very much applicable to the instant case. It has been mentioned in the written notes filed by the workman that these rulings are distinguishable because of peculiar facts of this case but it has not been spelt out as to what are the grounds/ facts on which these rulings become in-applicable. So in view of the legal position it is held that it is not within the scope of reference to decide as to whether the closure was a real or a false one.

It may also be mentioned here that the workman had sent rejoinder to the written notes of the Management through Courier service on 21st September, 1994. He had also sent an application for taking into evidence a document dated 7th May, 1994 viz Ex. WY to show that the Management is carrying on manufacturing activities. Right so, but this document has no relevance because the dispute is of closure from 17th September, 1988 to 25th March, 1989 and facts, relating thereto alone have to be looked into.

12. In the context of the discussion made above, it is held that the workman had not tendered resignation but his services were terminated inevitably as a result of closure. As discussed in "para 11 above" the reinstatement of the workman against a closed unit cannot legally be ordered. So, the Management in such cases has to abide by the directives of Industrial Disputes Act that in the case of closure, the service should be deemed to have been retrenched and legal dues should be paid along with retrenchment compensation. In this regard, the Management contends to have paid Rs. 14000 to the workman by virtue of a settlement arrived at whereas the workman has taken a stand that settlement was the result of threat and pressure and that draft for an amount of Rs. 6000 was also given to him forcibly and the balance amount of Rs. 8000 was never paid to him. Both the matters namely whether the settlement was arrived at forcibly and receipts for payment of an amount of Rs. 14000 were got executed under pressure, will be dealt with under Issues 3 & 4 and the findings thereon will be findings of the matter raised in Issue No. 1 relating to payment of final dues. I, therefore, propose to deal with Issues No. 3 & 4 before taking up Issue No. 1.

Issue No. 4

13. Ex. M-1 is the copy of settlement arrived at between the workmen and Management on 6th March, 1989. According to it, lumpsum payment of Rs. 14000 was to be made to the workman

in full and final settlement of all his claims including Earned wages, Earned leave, Over-time, Gratuity, retrenchment compensation, notice pay etc. The workman had also agreed to abandon his right to reinstatement or reemployment in the company. In his examination as WW-1, the claimant admitted his signatures as well as thumb impressions but stated that the same were obtained under pressure of K. P. Aggarwal and Managing Director Vijay Kapoor. The claimant also admitted his signatures and writing mark 'A' on Ex. M-5 which is full & final receipt in respect of payment of Rs. 6000 made to this co-worker Mukh Ram on 6th March, 1989 but also stated that his signatures were also obtained under pressure and that even Mukh Ram had thumb marked the receipt under pressure. Similar was his stand with regards to Ex. M-6 wherein it was mentioned that a settlement had been arrived at between the claimant and his co-worker Mukh Ram on the one hand and the Management on the other hand that in view of the same he was withdrawing all the pending cases. This document bears signatures of Kapil Dev and Mukh Ram. The claimant also stated that goondas sitting in the house of K. P. Aggarwal were holding hockey sticks and other wooden rods with them and gave beatings to him and Mukh Ram and that since the injuries were not visible, he did not get himself medically examined. He also stated that he had reported the matter to the Police but no head was paid to him. The claimant also admitted that he had put signatures on Provident Fund Form at five places but the same, too, were obtained under pressure.

14. The story of pressure which has been put forth by the claimant in respect of settlement and full & final receipt executed by him and also by his co-worker Mukh Ram appears to be concocted and after thought. It is evident from this that the workman took four divergent stands with regards thereto. The stand taken firstly in the demand notice is that 5-7 persons were present in the house of K. P. Aggarwal who had held out a threat to his life and got his signatures and thumb impressions on so many papers. There is no mention in the demand notice that above said 5-7 persons were 'goondas' and have been given beatings to the workman and his co-worker Mukh Ram with hockeys and wooden rods. Secondly, in his examination as PW-1 on 1st April, 1992. In the court of Sh. Krishan Kumar Sub Judge 1st Class Faridabad in a suit for permanent injunction. The claimant had admitted payment of full and final dues but did not utter word of any pressure having been exerted upon him. The third version that the goondas had beaten the workman with hockey sticks & wooden rods had come on record during the examination of the claimant as WW-1. The fourth version has been given in the written notes wherein has been mentioned that closure of the factory itself was a big pressure on the workmen and that they had been compelled to take full and final dues lest the Management should not dispose of the machinery and run away. One very important fact which has been brought to the notice of the court by placing on record copy of notice Ex. Mx which the workman had given to the Management through his counsel Sh. R. C. Sharma in a civil suit, the title of which is Ex. MW-2/15 (with it is also annexed the statement of the claimant) is that the place where he was forced to sign certain papers on 6th March, 1989 was factory premises Nehru Grounds, and there is no mention in this document of the residence of K. P. Aggarwal or the presence of 5-7 goondas. This document in a way belies the entire stand of coercion and threat taken by the claimant. The divergences so pointed out, therefore, show it beyond doubt that the workman had been bringing improvements in his stand so as to gain advantage but in fact has been caught in his own web. Non production of Mukh Ram who, too, is alleged to have received injuries with the claimant very much weakens already feeble stands of the workman. In view of this and also that the claimant has admitted his signatures on the settlement, it cannot be accepted that the settlement was made under any mis-representation of closure. Therefore, holding that the workman had not executed settlement dated 6th March, 1989 under any threat, pressure, coercion or mis-representation, I decide this issue in favour of the Management and against the workman.

Issue No. 3 :

15. K. P. Aggarwal examined as MW-1 stated that the claimant had expressed a desire that he also wanted to take his full and final dues and the former should prepare a chart of proposed payment to him (claimant) and other workers. The chart was prepared and the claimant had got the amount to be paid enhanced also. In pursuance of the settlement so arrived at a sum of Rs. 14000 was to be paid to the claimant. Out of this, a sum of Rs. 8000 was paid by him to the claimant in cash in the presence of Vijay Kapoor, Director of the company and the balance amount of Rs. 6000 was paid by means of Bank Draft got prepared in pursuance of talks which the claimant had with K. P. Aggarwal on 28th February, 1989. The witness had proved settlement Ex. M-1, receipt Ex. M-2, writing of claimant about receipt of amount Ex. M-3, and letter written to State Government Ex. MW-1/4. The witness stated that when the factory was closed on 17th September, 1988, no protest by any worker was lodged and that within 14 days of closure as many as 12-13 workers took away their full and final dues. The witness also stated that he had given cash and draft to the workmen by his own hands. The witness denied that no cash payment of Rs. 8,000 was made. He also denied that signatures and thumb impressions of the claimant were forcibly obtained on some papers. He also denied that he had told the workman that payment of Rs. 8000 would be made only after the claimant withdrew the cases of other workers. Vijay Kapoor examined as MW-2 stated that Kapil Dev, Ram Chander and Mukh Ram had been paid their

full and final dues on 6th March, 1989 and the only two persons out of the whole lot who were yet to receive payment were Chandrika and Hira Lal. The witness also proved all the documents which were executed between the parties viz. settlement, receipt voucher etc. as mentioned in the statement of K. P. Aggarwal.

16. Claimant Kapil Dev, examined as WW-1 stated that when he had gone to the house of K. P. Aggarwal on 6th March, 1989 for a meeting about closure, he had found 5-7 goondas sitting there and that under threat K. P. Aggarwal had obtained his signatures on some blank papers and vouchers and had also forcibly handed over Bank Draft for an amount of Rs. 6,000 to him. The claimant denied the receipt of balance amount of Rs. 8,000 and stated that the same was withheld and was to be released only when the claimant also got settled the cases of other workers. This aspect of the matter as to whether the claimant had put his signatures or thumb impressions on the settlement and receipt under any pressure has already been discussed while dealing with Issue No. 4 and for that reason are not being repeated here. It has been found that the story of threats, pressure and harangues allegedly given to the claimant are all after thought and concocted ones. This apart, the claimant had admitted in his cross-examination that there was no pressure upon him when he had presented the Bank Draft for encashment in July, 1989. Averments made on behalf of the claimant that the presentation of draft handed over to him on 6th March, 1989 to the Bank for encashment in July, 1989 should be taken as proof of pressure having been exerted upon him. The admission made by the claimant in the statement made by him on 1st April, 1992 in his suit for Permanent Injunction in a civil court that he had received his full & final payment provides a clincher to the whole matter and sets at naught the entire story which the claimant has woven to disprove the execution of settlement and receipt executed by him. So, viewed from any angle, it stands proved that the workman had received full and final payment and is not entitled to any relief. In **Andhra Landary Proprietor R. A. Maslamani Madras versus Additional Labour Court, Madras** and other 1968 (1) LLJ 356 it was held that workmen receiving amounts in settlements of their claim and passing individual receipts are estopped from putting a claim for the statutory benefits and are deemed to have waived off their right. I find no force in the averment made on behalf of the workman that this authority is distinguishable because the execution of receipts for payment of full and final dues have been proved in this case. So, in view of factual and legal position discussed above, this issue is decided in favour of the Management and against the workman.

Issue No. 2:

17. Stand of the Management is that the demand notice dated 28th March, 1989 of the workman had once been rejected by the State Government—vide rejection letter Ex. M-8 of 12th June, 1989 on the ground that the claimant had since received his full and final payment. As such, the present reference which is also based on the same demand notice of 28th March, 1989 is bad in law as no opportunity had been given to it to explain its stand. Workman Kapil Dev examined as WW-1 admitted in his cross-examination, the factum of rejection of his demand notice after management's offer of Management's contribution reference has been placed upon **M/s Escort Ltd., Faridabad versus Industrial Tribunal, Haryana Faridabad and others 1983 LIC (Punjab & Haryana) 223**. It was held therein while referring the matter for adjudication after the same had been rejected earlier, the rule of *audi alteram partem* is attracted to the exercise of power. Second time, in **Tribune Trust versus State of Punjab and others 1992 (2) SLR 264**, it was held that the reference of the matter after the same had been rejected earlier without issuing notice to the affected person is violative of the requirements of natural justice. The Hon'ble High Court had remanded the case for deciding the matter afresh in the light of their observations. For this view of things, the Hon'ble High Court had followed the dictum of the Hon'ble Supreme Court of India as referred to in this very citation. It runs as under:

"The latest view of the apex court is that even administrative action which tends to interfere with any body's civil right must also be preceded by some kind of a notice which would satisfy the requirements of natural justice".

Not a iota of evidence has been led by the workman to show that the Management had been served with any notice by the State Government before making a reference once the same had been rejected by it.

18. Two fold arguments have been made in this connection by the Authorised Representative for the workman. Firstly, that when there is no reference for it, this Tribunal cannot travel beyond the terms of reference and for that matter the Management should go to the High Court for seeking reference or for seeking amendment of wrongful reference. Secondly, the competent authority of the Labour Department had administratively, after due application of mind to the failure report by the conciliator, officer with the comments of respective parties, has to refer or refuse reference.

19. It is correct that the present dispute is pending for the last quarter of a century or years but this alone does not negative the law of the land as is laid down in various judicial precedents, two of which

have been discussed above. In 1992 (2) SLR 264 the matter was remanded by the Hon'ble High Court of Punjab & Haryana with a direction decide the matter afresh affording an opportunity of hearing to the petitioner as also the respondent. The other plea that to deal with this matter would be travelling beyond the scope of reference has also no basis because the plea taken by the Management is legal plea and is relevant because it strikes at the very basis of the reference. Such a plea can be taken at any stage. In this case, this plea was taken at very initial stages of the case viz., filing of written statement and no objection was taken by the workman at the time an issue with regards thereto was framed. So, for the reasons set out above, this issue is decided in favour of the management and against the workman.

20. In view of my findings on various issues discussed above, it is held that the workman had not resigned but his services were terminated in a legal and justified manner and when he is proved to have taken his full & final payment, he is not entitled to any relief. An award is passed accordingly.

The 27th September, 1994.

N. L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 3351, dated 27th September, 1994.

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 28th October, 1994

No. 14/13/87-Lab./772.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s The Ambala Central Cooperative Bank Ltd., Ambala City versus Mohinder Lal Saini.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 464/88.

WORKMAN SHRI MOHINDER LAL SAINI, SON OF SHRI RAMESHWAR DASS, HOUSE NO. 744, MOHALLA KHADI ASHRAM, NARAINGARH, DISTRICT AMBALA AND THE MANAGEMENT
(1) THE AMBALA CENTRAL COOPERATIVE BANK LIMITED, AMBALA CITY
(2) THE RAIPUR RANI COOPERATIVE CREDIT AND SERVICE SOCIETY LTD., RAIPUR RANI AT KHERI, DISTRICT AMBALA.

Peresent :

WR Shri J. R. Sharma.

MR Shri Gian Grewal.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Mohinder Lal Saini and the management (1) The Ambala Central Cooperative Bank Limited, Ambala City, (2) The Raipur Rani Cooperative Credit and Service Society Limited, Raipur Rani at Kheri, district Ambala to this court for adjudication,—vide Haryana Government notification No. 30110-115, dated 16th June, 1988:

"Whether the termination of the services of Shri Mohinder Lal Saini is valid and justified? If not so, to what relief is he entitled?"

The workman raised an industrial dispute by serving a demand notice dated 7th April, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate Government made the above mentioned reference.

On receipt of the reference notice were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 25th January, 1989. According to him he joined the post of secretary with the management on 10th March, 1983 and his services were abruptly terminated,—vide letter dated 12th September, 1983. He was again appointed in the Raipur Rani Cooperative Credit and Service Society Limited, Raipur Rani on 31st October, 1983 and the powers of the secretary were conferred,—vide endorsement dated 7th November, 1983 by the Managing Director of the management. But later on the powers were withdrawn,—vide endst. dated 3rd September, 1984. According to the workman he completed more than 240 days of service continuously in period preceding twelve months and his termination is in violation of section 25-F of the Act.

The management pleaded that the claim having been raised about 4-1/2 years is barred by limitation. It was also pleaded that this court has no jurisdiction to entertain and try the present reference. On merits it was pleaded that the appointment of the workman was for a fixed period of 89 days purely on *ad hoc* basis and his appointment was renewed for another period of 89 days. It was alleged that the terms and conditions were accepted by the workman and that he was never appointed by the management on 31st October, 1983, whereas he was appointed by the society and he never completed 240 days of service.

The workman submitted replication controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement.

The rival contentions of the parties gave rise to the framing of the following issues:

- (1) Whether the impugned termination of services of the workman is invalid? OPW.
- (2) Whether the claim statement is bad is alleged in preliminary objection of the WS? OPM.
- (3) Relief.

The workman produced his own affidavit Ex. W-1. The management also produced Ex. M1 affidavit of the Managing Director of the management and further produced Ex. M-1 and Ex. M-3 copies of appointment letters, dated 1st March, 1983 and 10th June, 1983 respectively and Ex. M-2 copy of the joining report, dated 14th March, 1983 of the workman and further produced copy of termination order, dated 11th September, 1983. The workman produced his counter-affidavit, Ex. W-2 and Ex. W-5 in the counter-affidavit of the management.

I have heard the representatives of the parties. My issuewise findings are as under:—

Issue No. 1:

No doubt the workman was appointed for 89 days each,—vide appointment letters Ex. M-1 and Ex. M-3. But appointment letter Ex. M-3 shows that he was appointed as secretary in the Raipur Rani Co-operative Credit and Service Society Ltd. from where he was terminated,—vide letter Ex. M-4. Therefore, the service rendered by the workman in the above mentioned society from 31st October, 1983 till 3rd September, 1984 shall be counted towards the service earlier rendered. It is worthwhile to mention here that the management has not denied the workman having rendered service in the Society after 11th September, 1983. If the entire period of service is computed, it is more than 240 days in a period preceding twelve months of his termination. Admittedly no chargesheet was served nor any enquiry was held. Similarly, no notice was given nor any retrenchment was paid. The termination is, therefore, illegal and the workman is entitled to reinstatement with continuity of service. The workman is however not entitled to back wages as he raised the dispute after a period of about five years and there is no explanation for this delay. It is accordingly held that the workman is entitled to reinstatement with continuity of service but without back wages.

Issue No. 2:

The onus to prove on this issue was on the management. The management has however not led any evidence on this issue. As such the finding on this issue shall stand returned against the management and in favour of the workman.

Relief:

In the end, it is held that the workman is entitled to reinstatement with continuity of service but without back wages.

The reference stands answered accordingly.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

The 4th October, 1994.

Ends. No. 163/, dated 6th October, 1994

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6 Lab./775.—In pursuance of the provisions of section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following ward of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. Transport Commissioner, Haryana, Chandigarh *versus* Ram Kumar.

IN THE COURT OF SHRI S. R. BANSAL, (ADDITIONAL DISTRICT AND SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 88/1991

WORKMAN SHRI RAM KUMAR, HELPER, SON OF SHRI MANGE RAM, VILLAGE AND POST OFFICE REHRA, TEHSIL AND DISTRICT KAITHAL AND THE MANAGEMENT (1) TRANSPORT COMMISSIONER HARYANA CHANDIGARH (2) GENERAL MANAGER HARYANA ROADWAYS KAITHAL

Present :

WR. Shri R. Nath.

MR. Shri V. K. Kohli.

AWARD

This court has been called upon to adjudicate the following reference made by the Hon'ble Governor of Haryana—*vide* gazette notification bearing no. 8992—97, dated 18th March, 1991:—

“Whether the termination of the services of Shri Ram Kumar is valid and justified? If not, so to what relief is he entitled?”

On receipt of reference notice were issued. The workman appeared and made a statement that his demand notice may be treated as his claim statement. The stand of the workman is that he was appointed as helper on 4th May, 1989 and his services were terminated on 4th June, 1990 without complying the mandatory provision of section 25-F of the Act.

The management however pleaded that the workman worked with the management from 8th August, 1989 to 31st May, 1990 and in all the workman worked for a period of less than 240 days. It was also pleaded that the workman never worked against the sanctioned post and therefore he is not entitled to reinstatement with continuity of service and back wages.

The workman submitted replication controverting the allegations of the management in the written statement filed. On the final contentions of the parties the following issues were framed:—

1. Whether the termination of the services of Shri Ram Kumar is valid and justified? If not so, to what relief is he entitled?

Parties were permitted to lead evidence by means of affidavits and documents. The workman submitted his own affidavit Ex. W-1 and also produced Ex. W-2 to Ex. W-5 issued by the management in favour of the workman showing the employment of the workman with the management. The management produced affidavit Ex. M-1 of General Manager, Haryana Roadways, Kaithal. The counter-affidavits are produced as Ex. W-6 of the workman and Ex. M-2 of the Management respectively.

I have heard the learned representatives of the parties. My finding are as under:

Issue No. 1:--

It is admitted position on the record that the workman worked from 8th August, 1989 to 31st May, 1990 as a helper on daily wages basis with the management. The workman however states that he joined the management on 3rd May, 1989 and his services were terminated on 4th June, 1990. The management has as per affidavit of the management admitted that the workman worked for a period of 224 days. The contention of the workman that he was in the employment of the management from 3rd May, 1990 is borne out from Ex. W-2 to Ex. W-4 various identity cards/slips issued by the management to the workman for the period prior to 8th August, 1989. There is no rebuttal from the management side to this evidence led. The contention of the management therefore that the workman did not work for a period of 240 days in a period preceding twelve months of his termination fails to the grounds stand and negative. It is rather borne out from the demand notice that the workman did work for a period of more than 240 days in a calendar year. That being the factual position it was incumbent upon the management to follow the mandatory provisions of section 25-F of the Act i.e. serving of charge-sheet, holding of enquiry, show-cause notice, one month's prior notice and then payment of retrenchment compensation. The same was however, admittedly, not done which has rendered the termination absolutely illegal and the workman is entitled to reinstatement with continuity of service. The affidavit of the workman nowhere states that he remained unemployed throughout. Although the back wages follows the reinstatement yet, having regards to the facts and circumstances of the case, I, order that the workman is entitled to only 50% of the back period wages for the period from serving of demand notice till the passing of the award. The finding on this issue is, therefore, returned in favour of the workman and against the management.

In the end, the reference shall stand answered in favour of the workman accordingly.

S. R. BANSAL,

The 6th October, 1994.

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1640, dated 6th October, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL.

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 15th November, 1994

No. 14/13/87-6 Lab./776 In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh versus Sagar Mal.

IN THE COURT OF SHRI S. R. BANSAL, (ADDL. DISTRICT AND SESSIONS JUDGE)
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 335 of 1988.

WORKMAN SAGAR MAL, DRIVER S/O SHRI BHOLA RAM VILLAGE & P. O. RANILA, TEHSIL CHARKHI DADRI, DISTRICT KURUKSHETRA AND THE MANAGEMENT OF THE TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH (II) GENERAL MANAGER, HARYANA ROADWAYS, KATHAL.

... Workman.

Present:

WR. Shri J. R. Sharma.
MR. Shri V. K. Kohli, LO.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of the Industrial Disputes Act, 1947 (herein called as the 'Act'), the Government of Haryana referred the following dispute between the workman **Shri Sagat Mal** and the Management of the Transport Commissioner, Haryana, Chandigarh (H) for General Manager, Haryana Roadways, Chandigarh to this court for adjudication. *vide* Haryana Government notification bearing No. 34320/25, dated 26th July, 1988:

"Whether the termination of services of **Shri Sagat Mal**, is valid and justified? If not so, to what relief is he entitled?"

The workman served a demand notice dated 19th April, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-in-Charge Conciliation Officer and the same having failed, the appropriate Government intimated the above mentioned reference to this court for adjudication.

On receipt of the reference notice was issued to the workman as well as to the management. The claim of the workman is that he was serving as Driver in Haryana Roadways since 15th March, 1981 and his services were terminated on 11th December, 1986 and the enquiry conducted against him was illegal and invalid. No show cause notice was given to him. Similarly his appeal was illegally rejected *vide* order dated 16th December 1987. He demanded his reinstatement with continuity of service and back paid wages.

The stand of the management is that the workman was given full proper opportunity. The enquiry proceedings were found guilty of Judge, District Court, Karnal and therefore he has no cause of action to file the present claim application.

Workman filed replication controverting the allegations of the management in the written statement filed. On the pleadings of the parties following issues were framed by the then Presiding Officer, Labour Court, Ambala for decision:

1. Whether the impugned termination of service of workman is invalid? OPW
2. Relief.

The workman appeared as WW-1 and closed his case. The management produced MW-1 **Shri Pala Ram**, Clerk, Haryana Roadways, Kurukshetra who produced documents Ex-M-1 to Ex-M-8 and also examined MW-2 **Shri Gurbax Singh** Enquiry Officer who proved enquiry proceedings Ex-M-W-1 and enquiry report Ex-M-1/2. The workman also produced Ex-WX copy of the judgement rendered in criminal case against him.

I have heard the Ld. representatives of the parties. My findings are as under:-

Issue No. 1.

It is an admitted position on the record that domestic enquiry was conducted against the workman. The grouse of the workman is that the enquiry conducted against him is invalid. MW-1 **Shri Pala Ram**, Clerk has proved various documents on the file. Ex-M-1 is the copy of communication addressed to General Manager, Haryana Roadways, Kurukshetra. Ex-M-2 is charge sheet alongwith the statement of allegations. Ex-M-3 is the receipt of the charge sheet. Ex-M-4 is the copy of the order *vide* which the Traffic Manager was appointed as Enquiry Officer. Ex-M-5 is the show cause notice. Ex-M-6 is the copy of reply to show cause notice. Ex-M-8 is the copy of the impugned order. Ex-M-1/1 is the copy of the enquiry proceedings and Ex-M-1/2 is the copy of the enquiry report. The only grouse of the workman is that in the domestic enquiry held against him no eye witness of the occurrence was examined by the Enquiry Officer and his findings were based mostly on the finding of Motor Accident Claim Tribunal in compensation claim submitted by the Tractor Driver. The second objection raised was that the enquiry Officer himself participated in the enquiry by putting question to deponent official. As mentioned above a charge sheet was served upon him to which he submitted his reply *vide* Ex-M-6. *Vide* Ex-M-4 the enquiry officer was appointed. Ex-M-1/1 and the enquiry proceedings and Ex-M-1/2 is the enquiry report. Ex-M-5 is the show cause notice and Ex-M-7 is the reply to the show cause notice and Ex-M-8 is the copy of the impugned order. No doubt the workman has been acquitted of criminal charge. But that by itself is not sufficient to conclude that there was no negligence on the part of the workman. It was not necessary for the Enquiry Officer to have examined eye witnesses of the occurrence. Similarly putting of a question to the workman does not tantamount to participate in the enquiry. It is an admitted position on the record that a claim for compensation was filed against the management of which

was allowed by Motor Accident Claim Tribunal, Kurukshetra and the management had to pay compensation of Rs. 10,000 to the Tractor Driver. I am, thus, fully convinced that termination of the services of the workman took place in pursuance of valid domestic enquiry and it appears that termination of his services is perfectly in order. Moreover the appeal preferred by the workman against the dismissal order stands dismissed by the State Transport Commissioner. The workman submitted reply to the show cause notice which was duly considered. This court is not to sit over as a court of appeal over the finding of the Enquiry Officer. The finding on this issue is, therefore, returned in favour of the management and against the workman.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 5th October, 1994.

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1652, dated 12th October, 1994.

Forwarded (four copies) to Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour
Court, Ambala.

No. 14/13/87-6 Lab./778.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. The Naggal Cooperative Credit and Service Society Limited, Naggal, Distt. Ambala, *versus* Gurmail Singh.

IN THE COURT OF SHRI S.R. BANSAL, ADDITIONAL DISTRICT & SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 355 of 1988

WORKMAN SHRI GURMAIL SINGH, SON OF SHRI DAL SINGH, THROUGH SHRI U.KANT, 14, CIVIL LINE, AMBALA CITY AND THE MANAGEMENT THE NAGGAL CO-OPERATIVE CREDIT AND SERVICE SOCIETY LTD., NAGGAL, DISTRICT AMBALA

Present :

WR, Shri C.L. Sharma.

MR. Shri D. R. Batra.

AWARD

In exercise of the powers conferred by clause (3) of sub-section 1 of section 10 of Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Gurmail Singh and the management The Naggal Co-operative Credit and Service Society Ltd., Naggal, District Ambala to this court for adjudication, *vide* Haryana Government Gazette, Notification bearing No. 35207-11, dated 29th July, 1988:—

“Whether the termination of service of Shri Gurmail Singh is valid and justified? If not, to what relief, is he entitled?”

The workman raised an Industrial dispute by serving a demand notice, dated 4th April, 1988 under Section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the present reference was made by the appropriate government.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and made a statement that his demand notice may be treated as his claim statement. The workman joined the management as salesman-cum-clerk on 25th August, 1984 and his services were terminated by the management, *vide* resolution, dated 16th March, 1988 on the ground that he is not Matriculate and can not carry on the work of the Society. According to the workman the orders of his termination in the absence of compliance of provisions of section 25-F of the Act are illegal and therefore he is therefore entitled to reinstatement with continuity of service and back wages.

The stand of the management is that the workman was wrong appointed in contravention of the rules regarding qualification and also because he failed to deposite the security of Rs. 2,000. It was pleaded in the amended written statement that the workman had also embazzled huge amount of Rs. 20,000 from the Society and still an amount of Rs. 5420-80 P. is outstanding against him.

The workman submitted replication controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement. On the rival contentions of the parties, the following points in issues were laid down for decision: -

- (1) Whether the impugned termination of services of the workman is invalid ? O.P.W.
- (2) Whether the reference is not maintainable as alleged in preliminary objection No. 1 of the WS ? O.P.M.
- (3) Relief.

I have heard the representatives of the parties. My findings are as under:—

Issue No. 1:

The workman appeared as WW-I and stated that he rendered service as Salesman-cum-clerk of the management from 25th August, 1984 to 16th March, 1988 and his services were terminated without any charge-sheet, enquiry or payment of retrenchment compensation. It is admitted by MW-2 Hem Raj, Sub-Inspector of the society that the workman has rendered more than 240 days of service continuously. He also admits that no prior notice was given nor any retrenchment compensation was paid to the workman. It is also admitted by him that no notice whatsoever was given to the workman that he is not Matric pass. The learned representative of the management argued that no notice was required to be given to the workman as no prejudice was caused to him nor any stigma was attached to his termination. No doubt the Common Cadre Rules of 1973 prescribed the qualification of Matric for a Salesman-cum-clerk but the workman can not be blamed for the same. It was for the management to have insisted for minimum qualification at the time of appointment. Having not done, so it is not open to them to terminate the services of the workman without affording him any opportunity particularly when Gian Chand another Salesman and one Kuldip Singh another employee of the society are also under Matriculation and are still working. Whatsoever be the cause it was incumbent upon the management to grant an opportunity of bearing before terminating his services, but no such hearing was granted nor any retrenchment compensation was paid. Termination is, therefore, illegal and the workman is entitled to reinstatement with continuity of service. The statement of the workman is categorical that he remained unemployed. He is, therefore, entitled to back period wages as well. The finding, on this issue is, therefore, returned in favour of the workman and against the management.

Issue No. 2:

The onus to prove on this issue was on the management. The management did not lead any evidence nor this issue was argued. Hence, the finding on this issue is, therefore, returned against the management and in favour of the workman.

Relief:

In the end, it is held that the workman is entitled to reinstatement with continuity in service and back period wages.

The reference shall stand answered accordingly.

The 6th October, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1654, dated 12th October, 1994

Forwarded (four copies) to the Principal Commissioner and Secretary to Government of Haryana Labour and Employment Department, Chandigarh, in accordance with section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 17th November, 1994

No. 14/13/87-6 Lab. 817. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum Labour Court-I, Faridabad, in respect of the dispute between the workman and the management of M/s K. G. Khosla Compressors Ltd., 188, Mathura Road, Faridabad *versus* Badri.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT-I, FARIDABAD

Reference No. 58 of 94.

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI BADRI C/O GENERAL SECRETARY, ALL K. G. KHOSLA EMPLOYEES UNION,
188, MATHURA ROAD, FARIDABAD *Claimant*

and

M/S K. G. KHOSLA COMPRESSORS LTD., 188, MATHURA ROAD,
FARIDABAD *Management*

Present :-

Sh. B. L. Gupta, authorised representative for workman

Sh. S. K. Bakshi, authorised representative for Management

AWARD

Under the provisions of section 10 (1) of Industrial Disputes Act, 1947, the Government of Haryana having *vide* Endst. No. ID/ED/15430/35, dated 22nd April, 1994, referred the following dispute between the parties above mentioned for adjudication :—

Whether the termination of services of Sh. Badri is legal and justified? If not, to what relief he is entitled?

The matter has since been settled between the parties. The workman has received an amount of Rs. 53,049 by means of Cheques, (Rs. 30,000 by Cheque No. 918903, dated 12th January, 1994, Rs. 18,049,—*vide* cheque No. 918902, dated 12th Jan., 1994 and Rs. 5,000 by Cheque No. 918903, dated 12th January, 1994) in full and final settlement of his claim. Ex. S-1 is the settlement signed by both the parties and Ex. S-2 receipt signed by the workman. Statement of Mr. Abheem G. Sawani, General Secretary of K. G. Khosla Employees Union by whom demand notice was filed, has also been recorded. No more dispute now survives in this case. As such, an award is passed accordingly. Settlement Ex. S-1 and receipt Ex. S-2 shall form part of the award.

N. L. PRUTHI,

The 20th October, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

Endorsement No. 1205, dated 14th October, 1994

A copy with three spare copies is forwarded to the Commissioner and Secretary to Government of Haryana Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.